Takings Snapshots, Volume 56, February 10, 2003

1. United States v. Alcan Aluminum Corp., 315 F.3d 179 (2nd Cir., January 7, 2003) (U.S. Court of Appeals for the Second Circuit, in accordance with the rulings of other federal courts which have addressed the issue, rejected the claim that imposition of retroactive liability under CERCLA, the federal superfund law, effected a taking; the appeals court discussed and rejected the argument that the split opinions in the U.S. Supreme Court's 1998 Eastern Enterprises case supported this taking argument).

2. Washoe County v. United States, 2003 WL 173971 (Fed.Cir., January 28, 2003) (Federal Circuit affirmed court of claims' ruling that Secretary of Interior did not take claimant's water rights by, in effect, denying the claimant permission to build a pipeline to transport water across federal lands; the court ruled that there was no physical occupation of the claimant's property interest because the government neither physically diverted nor decreased the amount of water accessible to the claimant (thus distinguishing this case from Tulare Lakes, which the court described as "not binding" on the Federal Circuit in any event); the court also ruled that there was no regulatory taking because the government was not acting in its regulatory capacity in denying permission to construct the pipeline but only in its capacity as a land owner/manager).

3. Homebuilders Association of Metropolitan Portland v. Tualatin Hills Park and Recreation District, 185 Or.App. 729, 2003 WL 122321 (Or. Ct. Apps., January 15, 2003) (Oregon Court of Appeals, affirming the trial court, rejected a regulatory takings challenge to a park and recreation district's "system development charge" on new development designed to support the creation of new parks and recreation facilities; applying the Oregon Takings Clause, the court ruled that the claim clearly failed, whether the claim was viewed as alleging a taking of the money required to be paid or a taking of the real property to which the exaction was attached; applying the federal Takings Clause, the court found the issue more complicated, but ultimately rejected this claim as well; following the Oregon Court of Appeals' decision in Rogers Machinery, the court held that the Nollan/Dolan

tests did not apply to legislatively enacted monetary exactions; the court suggested that the rational basis test probably governed the federal claim, but left open the possibility that a slightly more demanding "reasonable relationship" test might apply, ultimately ruling that this monetary exaction was constitutional under either standard).

4. Bassett v. United States, 2002 WL 31958219 (Ct. Fed. Cls., December 27, 2002) (this is a bizarre case in which the U.S. EPA, in the mistaken belief that it was acting with landowner permission, deposited significant quantities of superfund waste on the claimant's property; the court of federal claims, based on the United States' admission of liability for a physical taking, awarded just compensation of approximately $360,000; the court ruled that, for the purpose of calculating the just compensation due, the relevant property included not only the three acres filled with waste but the plaintiff's entire contiguous holding "stigmatized" by the waste).

5. Johnson v. United States, 2003 WL 203136 (Fed.Cir. January 30, 2003) (Federal Circuit ruled that corporate shareholder lacked standing to maintain a takings suit as a derivative action on behalf of the corporation; the court reasoned that the plaintiff failed to meet the requirements for maintaining a derivative action since the plaintiff's stock was cancelled as a result of the corporation's reorganization in bankruptcy and, therefore, the plaintiff failed to maintain his shareholder status throughout the litigation).

6. Beekwilder v. United States, 2002 WL 31958795 (Ct.Fed.Cls. December 26, 2002) (court of federal claims (Smith, J.) rejected regulatory taking claim based on land developer's alleged inability to develop a small portion of a 63-lot subdivision due to Clean Water Act wetlands restrictions; the court held that the United States could not be held liable for the local city's rezoning of 14 lots as open space conservation, which was allegedly based on the Army Corps' identification of wetlands on the property, because the city was not acting under federal authority; the court also rejected the taking claim with respect to the 14 acres based on the argument that the mitigation necessary to develop the property would

render the lots economically worthless, on the ground that the claim was not ripe because the claimant had not actually filed an application with respect to the 14 lots and therefore it was unclear what mitigation requirements the Army Corps would actually impose).

7. Castel v. City of Hailey, 2003 WL 246920 (9th Cir., February 3, 2003) (unpublished decision) (in an interesting case, the Ninth Circuit considered the question of whether a Lucas claim was barred because the property had earlier been transferred to the city as a result of a common-law dedication; the court ruled that the evidence was insufficient to establish a dedication and therefore vacated the judgment for the city and remanded the case to the district court; the third member of the panel, in a concurring opinion, argued that since the city failed to show a dedication, judgment should have been entered in favor of the owner on its taking claim).

8. Jones v. Philadelphia, 2003 WL 193695 (3d Cir., January 29, 2003) (unpublished decision) (U.S. Court of Appeals for the Third Circuit ruled that police officers' search of corporate offices and detention of individuals in the building did not result in compensable takings; the court said that a person's body cannot be viewed as property for the purpose of the Takings Clause; the court also said that the corporation (1) did not suffer a Loretto taking, because there was no permanent occupation of the property, and (2) did not suffer a taking under Penn Central, given the modest economic impact, the government's law enforcement purpose, and the temporary nature of the intrusion).

9. Hallco, Texas, Inc. v. McMullen County, 2002 WL 31556358 (Tx.Ct.App. November 20, 2002) (Texas Court of Appeals affirmed trial court ruling that county order prohibiting claimant from operating a waste disposal facility on its property did not effect a taking, on the ground that the plaintiff lacked the necessary reasonable investment-backed expectations to support the claim, given that waste disposal was not an established use of the property and the claimant had never obtained the state permit necessary to operate this type of facility).

10. Florida Department of Agriculture & Consumer

Services v. Haire, 2003 WL 118257 (Fl.Ct.App. January 15, 2003) (Florida court of appeals reversed a trial court injunction barring implementation of the 2002 Florida Citrus Canker Law, which authorizes state officials to destroy healthy trees in order to prevent the spread of citrus canker, a disease which threatens the Florida citrus industry; the court ruled that the state could not destroy the healthy trees without paying their owners compensation, but that the owners' ability to sue for compensation in separate litigation precluded injunctive relief in this case).

11. Henderson County Drainage District No. 3 v. United States, 2003 WL 179780 (Ct. Fed Cls. January 23, 2003) (court of federal claims declined to dismiss, based on applicable statute of limitations, drainage district's taking claim based on Army Corps' maintenance of a navigation channel; the court ruled that the Army Corps' ambiguous statements created "justified uncertainty" about when the alleged taking may have occurred).